

month and ten year Treasury obligations. Similarly, if the rates on the two loans are based on different compounding assumptions, whether the terms of the loans are substantially similar shall be determined by taking into account the different compounding assumptions. A securities acquisition loan may be evidenced by any note, bond, debenture, or certificate. Also, section 133(b)(2) provides that certain loans between related persons are not securities acquisition loans. In addition, a loan from a commercial lender to an ESOP or sponsoring corporation to purchase employer securities will not be treated as a securities acquisition loan to the extent that such loan is used, either directly or indirectly, to purchase employer securities from any other qualified plan, including any other ESOP, maintained by the employer or any other corporation which is a member of the same controlled group (as defined in section 409(l)(4)).

Q-2: What lenders are eligible to receive the fifty percent interest exclusion?

A-2: Under section 133(a), a bank (within the meaning of section 581), an insurance company to which subchapter L applies, or a corporation (other than a subchapter S corporation) actively engaged in the business of lending money may exclude from gross income fifty percent of the interest received with respect to a securities acquisition loan (as defined in Q&A-1 of §1.133-1T). For purposes of section 133(a)(3), a corporation is actively engaged in the business of lending money if it lends money to the public on a regular and continuing basis (other than in connection with the purchase by the public of goods and services from the lender or a related party). A corporation is not actively engaged in the business of lending money if a predominant share of the original value of the loans it makes to unrelated parties (other than in connection with the purchase by the public of goods and services from the lender or a related party) are securities acquisition loans.

Q-3: May loans which qualify for the fifty percent interest exclusion under section 133 be syndicated to other lending institutions?

A-3: Securities acquisition loans under section 133 may be syndicated to other lending institutions provided that such lending institutions are described in section 133(a) (1), (2) or (3) and the loan was originated by a qualified holder. Subsequent holders of the debt instrument may qualify for the partial interest exclusion of section 133 if such holders satisfy the requirements of section 133 and such loan does not fail to be a securities acquisition loan under section 133(b)(2).

Q-4: When is section 133 effective?

A-4: Section 133 applies to securities acquisition loans made after July 18, 1984, and used to acquire employer securities after July 18, 1984. The provision does not apply to loans made after July 18, 1984, to the extent that such loans are renegotiations, directly or indirectly, of loans outstanding on such date. A loan extended to an ESOP or sponsoring corporation after July 18, 1984, will be treated as a renegotiation of an outstanding loan if the loan proceeds are used to refinance acquisitions of employer securities made prior to July 19, 1984. For example, if an ESOP borrowed money prior to July 19, 1984, to purchase employer securities and after July 18, 1984, borrows other funds from the same or a different commercial lender to repay the first loan, the second loan will be treated as a renegotiation of an outstanding loan to the extent of the repaid amount. Similarly, if, after July 18, 1984, an ESOP sells employer securities, uses the proceeds to retire a pre-July 19, 1984, loan and obtains a second loan to acquire replacement employer securities, the second loan will be treated as a renegotiation of an outstanding loan.

[T.D. 8073, 51 FR 4319, Feb. 4, 1986]

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[T.D. 8712, 62 FR 2283, Jan. 16, 1997]

EFFECTIVE DATE NOTE: By T.D. 8712, 62 FR 2283, Jan. 16, 1997, § 1.141-0 was added, effective May 16, 1997.

### TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS

#### **§ 1.141-1 Definitions and rules of general application.**

(a) *In general.* For purposes of §§ 1.141-0 through 1.141-16, the following definitions and rules apply: the definitions in this section, the definitions in § 1.150-1, the definition of placed in service under § 1.150-2(c), the definition of grant under § 1.148-6(d)(4)(iii), the definition of reasonably required reserve or replacement fund in § 1.148-2(f), and the following definitions under § 1.148-1: bond year, commingled fund, fixed yield issue, higher yielding investments, investment, investment proceeds, issue price, issuer, nonpurpose investment, purpose investment, qualified guarantee, qualified hedge, reasonable expectations or reasonableness, rebate amount, replacement proceeds, sale proceeds, variable yield issue, and yield.

(b) *Certain general definitions.*

*Common areas* means portions of a facility that are equally available to all users of a facility on the same basis for